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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,752	06/26/2003	Mark A. Pickering	PIC001-049	3793
7590	09/17/2004		EXAMINER	
DIEDERIKS & WHITELAW, PLC #301 12471 Dillingham Square Woodbridge, VA 22192			COCKS, JOSIAH C	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 09/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/603,752	PICKERING, MARK A.
	Examiner	Art Unit
	Josiah Cocks	3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 26 June 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-19 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 26 June 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/26/2003</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Drawings

1. The drawings on 6/26/2003 are accepted by the examiner.

Claim Rejections - 35 USC §§ 102 & 103

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1, 15 and 16 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 6,349,714 to Hurley et al. (“*Hurley*”).

Hurley discloses in Figures 1-15 a cooking appliance and method substantially as described in applicant’s claims 1, 15, and 16. In particular, *Hurley* discloses a cooktop (Fig. 1), at least one gas burner assembly (24), and a wire filament (44) in the form of a wire coil arranged adjacent to the at least one burner assembly. The wire filament receives electrical energy and is

heated to a temperature to ignite the gaseous fuel supplied to the burner and controlled by valve (86) (see col. 4, lines 48-60). In regard to the recitation of a control unit, the examiner considers that it would inherent in the disclosure of *Hurley* that a control unit would exist to control the electrical energy supplied to the wire coil (44). The examiner considers that this coil would be heated to provide a second heat energy source when there is an absence of a flow of gas to the burner. The control unit that must be present to control the electrical energy would also be inherently capable of supplying this energy in a “second mode” as recited by applicant.

5. Claims 2-6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Hurley*, as applied above, in view of U.S. Patent No. 1,716,329 to Simpson (“*Simpson*”) (cited by applicant).

Hurley teaches all the limitations of claims 2-6 and 18 except that the wire coil is formed from a plurality of segments that are independently of concurrently controlled.

Simpson teaches a combination electric and gas stove in the same field of endeavor as *Hurley*. In *Simpson*, electrical energy is supplied to a plurality of heating elements (4 and 5) that are operable independently of one another (see *Simpson*, page 1, lines 50-53). The examiner considers that because these elements are operable independently they are also capable of being operated at the same time and thus concurrently with one another.

In regard to the limitations of the claims that the filament includes four segments, this recitation is regarded as simply a matter of duplicating the two segments disclosed by *Simpson* and is not considered to be patentably distinct unless a new or unexpected result is produced. See MPEP § 2144.04(VI)(B). Further in regard to the limitation that the segments each operate

on 40 watts of electrical energy, it would be simply a matter of optimization of the prior art though routine experimentation to determine the appropriate electrical energy value to be supplied to the heat coils. See MPEP § 2144.05(II)(A).

Therefore, in regard to claims 2-6 and 18, it would have obvious to a person of ordinary skill in the art at the time the invention was made to modify the wire coil of *Hurley* to incorporate the plurality of segments taught by *Simpson* as it is recognized in the art that it is desirable to an operator of the device to provide independent operation of multiple electric heating units in a gas and electric combination range (see *Simpson*, page 1, lines 50-53).

6. Claims 7-14, 17, and 19 rejected under 35 U.S.C. 103(a) as being unpatentable over *Hurley* in view of *Simpson* as applied to the claims above, and further in view of U.S. Patent No. 2,921,176 to *Scofield* ("*Scofield*").

Hurley in view of *Simpson* teach all the limitations of claims 7-14, 17, and 19 except for a re-radiant coil.

Scofield teaches a gas and electric heating device in the same field of endeavor as *Hurley*. In *Scofield*, the device includes a re-radiant coil (see Fig. 2) that is adapted to be driven to radiant temperatures by an ignited flow of gas (see col. 4, lines 30-43).

Therefore, in regard to claims 7-14, 17, and 19, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify *Hurley* to incorporate the re-radiant coil of *Scofield* for the desirable purpose of providing a low heat "simmer" adjustment which has been difficult to achieve in gas ranges (see *Scofield*, col. 2, lines 7-11).

Conclusion

7. This action is made non-final. A THREE month shortened statutory period for reply has been set. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) months from the mailing date of this communication.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent to Das et al., Evans, and Aoki et al., and British Patent No. 1 426 123 are included to further show the state of the art concerning gas and electric ranges.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (703) 305-0450. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (703) 308-1935. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc
September 14, 2004


JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749